REMARKS

Applicant thanks the Examiner for requesting an updated filing receipt and for acknowledging the claim for foreign priority.

The Examiner rejected claim 45 and three of its dependent claims in view of Miles U.S. Patent No. 5,353,788. Although the Examiner acknowledges that Miles does not disclose that the processor has instructions for determining airway patency by detection of cardiogenic airflow, the Examiner argues that Miles' structure is the same as applicant's and is capable of being programmed with instructions for determining airway patency without the installation of additional software. Applicant does not understand the rejection. If Miles is not programmed to determine airway patency by detection of cardiogenic airflow, how can Miles possibly be programmed to do it without the installation of new software?

In any event, it appears that the problem is with the claim language, not anticipation of applicant's invention by Miles. The Examiner interpreted the original language as 'intended use', not structure. To overcome the rejection, applicant is amending the independent claim to recite "a processor programmed to determine." This is a positive claim element, not even in means-plus-function form, and is in a format that is uniformly approved. (If the Examiner objects to the word 'programmed' for any reason, this word can be deleted.)

Claims 46 and 47 were rejected as being obvious over Miles in view of De Vuono et al. U.S. Patent No. 4,989,595. While De Vuono adds a turbine to the mix, applicant believes that the Examiner would agree that if claim 45 is not obvious in view of Miles, the claim is not obvious even when De Vuono's turbine is taken into account.

With respect to claims 48 and 53, it is academic whether it would have been obvious to have used a Fourier Transform in the analysis since it is believed that the independent claim defines unobvious subject matter. As such, it

does not matter how the analysis is performed. Similar remarks apply to rejected claim 54.

Claims 39-43, 45, 46 and 50 were rejected on the ground of double patenting. A terminal disclaimer accompanied by the required fee under 37 CFR 1.20 (d) is being filed herewith to overcome the rejection.

Respectfully submitted,
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